the overpayment. On the other hand the market in 1964 was definitely better than that in 1957. The pre-confrontation property boom reached its height in the second half of 1964. The value of the subject property in November 1964 was therefore at its peak and consequently was more than the value in 1957.

On the basis of all the evidence before the board in this case, and having taken into consideration the submissions made by both counsel, I am of the opinion that the award in this case is inadequate and that it should be increased to $10 per sq. ft. As the subject lot has an area of 6,105 sq. ft. the award at the rate of $10 per sq. ft. amounts to $61,050. The collector's award of $42,735 is accordingly increased to $61,050.

Order accordingly.

Solicitors: *Allen & Gledhill; Rodyk & Davidson.*

MALAYSIAN REPORTS

GOVERNMENT OF THE STATE OF SELANGOR v. CENTRAL LORRY SERVICE & CONSTRUCTION LTD.

[O.C.J. (Mohamed Azmi J.) April 26, 1971]

[Kuala Lumpur — Civil Suit No. 502 of 1968]

Practice and Procedure — Discovery and inspection — Government contract — File containing tender documents — Whether privileged — R.S.C., 1957, O. 31 — Evidence Ordinance, 1950, s. 126(1).

Evidence — Privilege — Government contract — Tender documents — Evidence Ordinance, 1950, s. 126(1).

The defendants had successfully tendered for certain drainage works for the sum of $172,224.40. As a result of their failure to complete the works, the plaintiff had to invite a second tender. One Soon Tat & Co. successfully tendered for the sum of $241,906.40. Consequently the plaintiff claimed a sum of $113,983.15 alleged to be due from the defendants. The defendants applied for discovery and inspection of the file relating to the second tender/contract, in particular, the tender documents of Soon Tat & Co. and all the other contractors who also tendered for the second contract. The plaintiff objected to the application, except in so far as to the contract and tender documents relating to Soon Tat & Co., on the ground of privilege under section 126(1) of the Evidence Ordinance.

Held: the file in question was not privileged against discovery and inspection by the defendants.

Cases referred to:-

(1) *Chadlick* v. *Bowman* (1886) 16 Q.B.D. 561.

(2) *Wheeler* v. *Le Marchant* (1881) 17 Ch. D. 675 at p. 681.

SUMMONS IN CHAMBERS.

Abdul Razak bin Dato' Abu Samah (Legal Adviser, Selangor) for the plaintiff.

Wong Soon Foh for the defendants.

Cur. Adv. Vult.

Mohamed Azmi J.: This is an application by summons in chambers by the defendants in Kuala Lumpur Civil Suit No. 502 of 1968 for discovery and inspection of documents under Order 31 of the Rules of Supreme Court. The relevant application is for an order that the plaintiff be ordered to produce for inspection the file relating to the second tender/contract, in particular, the tender documents of Messrs. Soon Tat & Company and all the other contractors who also tendered for the second contract. Counsel for the plaintiff, the Government of the State of Selangor, objected to the application (except in so far as to the contract and tender documents of Messrs. Soon Tat & Company) on the ground of privilege under section 126(1) of the Evidence Ordinance. In support thereof, the plaintiff filed an affidavit sworn by one Gan Ching Lim, the State Drainage and Irrigation Engineer Selangor, dated April 22, 1971. Paragraph 6 of the affidavit states: —

"I object to produce the file relating to the second contract on the ground that the said file which has been set forth in the second part of the first schedule to the affidavit of documents filed on 15th October, 1970 are from their nature privileged."

After hearing arguments from both counsel and having perused the pleadings (and, incidentally, the

statement of claim was prepared by me when I was officiating as State Legal Adviser, Selangor). I come to the conclusion that the file in question is not by its nature privileged under section 126(1) of the Evidence Ordinance, and I also find it is most relevant to the defence. The defendants were employed by the plaintiff to do certain works known as Sungai Kelambu Drainage Scheme after the former had successfully tendered for the works for the sum of $172,224.40. As a result of their failure to complete the works in accordance with the agreement entered into between the parties, the plaintiff invited a second tender for completion of the works left over by the defendants. This time, Messrs. Soon Tat & Company were successful in their tender for the sum of $241,906.40. In the result, in accordance with a clause in the first contract, the plaintiff claims a sum of $113,983.15 alleged to be due from the defendants.

By paragraph 7 of the statement of defence, the defendants contend that the plaintiff did not take reasonable and diligent steps in calling for the second tender and in completing the remaining works and that the contract sum of $241,906.40 alleged to be awarded to Messrs. Soon Tat & Company is exhorbitant and excessive. Having regard to the nature of the defence, I think it is only fair and just that the defendants should be given the opportunity to inspect the file in respect of the second tender for the purpose of establishing whether or not the contract sum of $241,906.40 awarded to Messrs. Soon Tat & Company is exhorbitant and excessive.

On the question of privilege, I do not think that the file in question by its very nature comes within the ambit of the provision of section 126(1) of the Evidence Ordinance. The affidavit dated April 22, 1971 does not state precisely in what way the plaintiff intends to put the claim for protection. In this case, the file relating to the tender documents of all the other contractors who together with Messrs. Soon Tat & Company tendered for the second contract is not, in my view, confidential communication between solicitor and client. There is no evidence to support that it contains documents which the plaintiff has submitted to its solicitor confidentially or with which the solicitor has become acquainted in the course and for the purpose of his professional employment. The plaintiff's claim is basically based on the breach of the first contract and not of the second contract.

Further, in the case of *Chadlick* v. *Bowman*,[1] it was held that documentary information from third persons not called into existence by the solicitor, though obtained by him for purposes of litigation are not privileged. Similarly, in this case, the documents concern tenders by third parties (the contractors) with the State Drainage and Irrigation Engineer. The fact that he is an agent of the State Government is irrelevant, as the inspection of the documents will not be against public policy. On the other hand, it will show whether or not the tenders board has acted reasonably in accepting the tender of Messrs. Soon Tat & Company. As stated by Jessel M.R. in *Wheeler* v. *Le Marchant*:[2]

"In the first place, the principle protecting confidential communications is of a very limited character. It does not protect all confidential communications which a man must necessarily make in order to obtain advice, even when needed for the protection of his life, or of his honour, or of his fortune. There are many communications which, though absolutely necessary because without them the ordinary business of life cannot be carried on, still are not privileged.... Therefore it must not be supposed that there is any principle which says that every confidential communication which it is necessary to make in order to carry on the ordinary business of life is protected. The protection is of a very limited character, and in this country is restricted to the obtaining the assistance of lawyers, as regards the conduct of litigation or the rights to property. It has never gone beyond the obtaining legal advice and assistance, and all things reasonably necessary in the shape of communication to the legal advisers are protected from production or discovery in order that that legal advice may be obtained safely and sufficiently."

In my view, from the circumstances of this case and from the nature of the documents, the claim for privilege cannot be sustained.

The application is, therefore, allowed in terms of the summons.

Application allowed.

Solicitors: *Chooi & Co.*

ANNA YONG YU HIONG v. GOVERNMENT OF SARAWAK

[O.C.J. (B.T.H. Lee J.) June 11, 1971]

[Kuching — Civil Suit No. K. 42 of 1970]

Damages — Assessment — Measure of — Gratuity and pension under the Widows' and Orphans' Pensions Ordinance (Sarawak Cap. 90) — Whether to be taken into account — Considerations on calculation of amount of dependency.

The plaintiff, widow and administratrix of the estate of her deceased husband, claimed damages in respect of his death from injuries received while a passenger in the defendant's vehicle, sometime on May 20, 1969.

The defendant admitted liability and the only question to be determined was the amount of damages recoverable by the plaintiff.

The deceased was an overseer artisan grade I, employed by the Public Works Department, Miri, Sarawak. He was about 29 years old at the time of the accident. He left behind a widow and two children, then aged 16 months and 6 months respectively, all of whom were dependent on the deceased. It was not in dispute that the deceased's basic salary at the time of his death was $230 per month. In addition he was entitled to $17 children's allowance. His overtime allowance averaged $100 *per mensem*.

The plaintiff had been granted pension in the sum of $110.27 per month under the Widows' and Orphans' Pensions Ordinance since the death of her husband. She also received death gratuity under the Pensions Ordinance in the sum of $2,760.

The question which arose for decision was whether account should be taken of the pension which was received by the widow.

Held: (1) the Widows' and Orphans' Pensions Ordinance (Sarawak Cap. 90) has no counterpart equivalent to section 40 of the English Widows' Orphans' and Old Age Contributory Pensions Act, 1956, which excludes widows' and orphans' pensions in assessment of damages. Therefore, in applying the common law, such pensions and death gratuity must be taken into account;